

SOUTH AFRICA / JUDGMENT

SACSAAWU obo Rampedi and Others v Volsec Security SA (PTY) Ltd and Others (JR 2013/2020) [2022] ZALCJHB 351 (8 December 2022) [2022] ZALCJHB 351

COURT

Labour Court Johannesburg

BEFORE

Van Niekerk

CASE / FILE NUMBER

JR 2013/2020

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 2013/2020

In the matter between:

SACSAAWU OBO RAMPEDI, MICHAEL &

4 OTHERS

Applicants

And

VOLSEC SECURITY SA (PTY) LTD

First Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Second Respondent

COMMISSIONER EVA NGOBENI N.O.

Third Respondent

Delivered: 08 December 2022

(This judgment was handed down electronically by circulation to the parties' representatives, by email. The date on which the judgment is delivered is deemed to be 08 December 2022.)

RULING:

APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK, J

- [1] The applicants in the present application for leave to appeal are the respondents in the review application in which the court on 6 November 2020 reviewed and set aside an arbitration award issued by the third respondent.
- [2] The test for leave to appeal is established by section 17 of the Superior Courts Act. The court must determine whether there is a reasonable prospect that another court would come to a different conclusion; more precisely, whether there is a reasonable prospect that the factual matrix would receive a different treatment or where there is some legitimate dispute on the law (see *Martin & East (Pty) Ltd v NUM* (2014) 35 ILJ 2399 (LAC)).
- [3] The applicants seek leave to appeal on five grounds. The first is that the court erred in finding that the evidence on record was that the new site to which the individual applicants were required to relocate was not more than 60 km from the placement at Silver Mall. Secondly, the applicants contend that the court erred in its finding that the instruction given to the individual applicants to transfer from one side to the other was reasonable. Thirdly, the applicants contend that the court considered irrelevant factors, being the applicant's failure to lodge a grievance a dispute in relation to the transfer. Fourthly, the applicants submitted that the court erred in finding that there was substantial misconduct on the part of the individual applicants and finally, that the court erred in the exercise of its discretion when it determined that the matter should be remitted to the CCMA for a rehearing.
- [4] In regard to the first ground, the evidence before the third respondent was that the new site, as reflected in the letter of transfer issued to each of the individual applicants, was not more than 60 km from the applicants current site of deployment, i.e. Silver Mall. The applicants did not dispute this during the course of the proceedings under review and there is thus no basis to the first ground of appeal. In so far as the applicants contend that the court erred in finding that of the instruction given to them to transfer from one site to another was reasonable, the evidence before the arbitrator was that the instruction that the applicants failed to obey it was an instruction to report to Hillcrest Boulevard so that transport could be provided for them to PPC Laudium, the site to which they had been transferred. Letters of transfer issued to each of the applicants within a reasonable time. When the letters were issued, none of the applicants lodged any grievance or dispute. In terms of the applicable sectoral determination, the employer is entitled to transfer employee from one site to another on condition that should the transfer be to a site in excess of 60 km from the site of

deployment, travel allowance is payable as indicated above, on the evidence, the new site was not more than 60 km from the employees site of deployment. In so far as the applicants rely on a conversation by the respondent's witness Coetzee to the effect that no consultation was undertaken prior to the decision to transfer, this submission ignores the evidence of the witness Wolmarans to the effect of that the transfer letters were discussed with the applicant's, as was the distance of the transfer. It was only on that day that the applicants were to report for duty at the new site that they refused to do so. Finally, in relation to the substitution of the arbitration award, the court has a discretion to limit the matter for hearing or to make a decision on the papers and substitute the arbitrator's decision. The LAC has held that where the review court in an unfair dismissal dispute is in as good a position as the arbitrator to make a determination, there is no reason why the review court should not decide the matter itself. This approach is consistent with the statutory purpose of providing effective and speedy resolution of labor disputes. In the present instance, the court had the entire record of proceedings and was in as good a position as any arbitrator to make a determination. The remission of the matter for hearing would have served only to delay

the finalization of the matter.

- [5] For the above reasons, I am not persuaded that there are no reasonable prospects that the applicants will succeed in another court. There is no other compelling reason for leave to appeal to be granted. The application thus stands to be dismissed
- [6] Finally, there is no reason why the application should not be dismissed with costs. The respondent has been obliged to incur the costs of opposition to the application and the requirements by indemnifying the respondent in respect of those costs, to the extent that an order for costs can do so.

I make the following order:

1. The application is dismissed, with costs.

André van Niekerk

Judge of the Labour Court of South Africa

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Prepared on 14 October 2026 · Esheria